

# CARING FOR VICTIMS OF TERRORISM | The Djerba Case

Uri Yanay

**Zusammenfassung** | Sozialarbeiter werden häufig zur Behandlung und Betreuung von Opfern und Überlebenden von Gewalttaten herangezogen. Bei einem terroristischen Attentat auf eine Gruppe von Urlaubern aus Deutschland wurden auf der tunesischen Insel Djerba im Jahr 2002 durch die Explosion eines Tanklastwagens viele Menschen getötet und verletzt. Der Artikel beschreibt die Schwierigkeiten der Opfer, denen im Widerspruch zur öffentlichen Wahrnehmung und politischen Rhetorik lediglich die Leistungen der regulären staatlichen Sozialversicherung sowie freiwillige medizinische und Wohlfahrtsprogramme zur Verfügung stehen.

**Abstract** | Social workers are often engaged to treat victims and survivors of terrorist acts and care for them. The article focuses on a German group that visited the Tunisian island of Djerba in 2002 when a truck bomb exploded killing and injuring many of them. It was soon realized that despite vast Media coverage and political rhetoric, the only support programs for these victims are the regular, basic state social insurance and ‚Land‘ labour, medical and welfare programs.

**Schlüsselwörter** ► Terrorismus ► Opfer ► Opferschutzgesetz ► Hilfe

**Introduction** | Caring for victims of any kind is an issue of social welfare. Social workers employed in hospitals, mental health, welfare, child and youth agencies and even services for the aged treat victims of violent acts. It is not only the trauma but also other, complex needs that such clients have. However, are there always the necessary resources to serve them adequately?

Victims of terrorism are viewed as a unique group (Albrecht; Kilchling 2007) that the state has the duty to care for (Goodey 2003, Yanay 2006). A number of European countries have specific compensation programs designed exclusively for victims of terrorism (Greer 1996, Letschert et al. 2010). However, does

the state have such a duty, if victimization occurred outside the country, to people traveling outside Europe?

This article focuses on the complexity of serving victims of terrorism. It highlights the case of German tourists who were victimized in a terrorist act in Djerba, Tunisia in 2002. The article holds three parts. The first part defines the research arena and highlights conventions, declarations and specific standards designed for victims. The second part tells the tragic story of the German tourist group in Djerba and the third part is a discussion of selected policy, coverage and social welfare issues involved.

**Social Work with Victims of Crime and Terrorism** | No one knows when a disaster might happen and what its devastating results will be. When disasters happen, state and local rescue and relief teams arrive (Yanay et al. 2011), but their support may be short and limited. Social workers serve as care givers and therapists who follow the victims and care for survivors long after the incident has ended (Pyles 2006, Reardon 2010, Tosone et al. 2010, Ngh Tong Tan et al. 2006).

Social workers have the duty to support individuals, families, groups and sometimes the entire community for a long time. The Lockerbie disaster happened in November 1988 but the community needed a long term support (Brooks; McKinlay 1992) so do the victims of the disaster that took place in New York on September 11, 2001 (McTighe 2009), the train explosions in Madrid, Spain on March 11, 2004 and the London bombings on July 7, 2005. Most survivors and victims are still treated by medical, welfare and therapeutic services. They will probably be cared for and supported in the years to come. Voluntary organizations such as Victim Support<sup>1</sup> and Weißer Ring<sup>2</sup> can indeed counsel victims and provide basic short term help. Not always do they have the professional knowledge and the resources needed to provide long term care for victims and their families. Professional social workers take over.

**The Research Arena** | Anybody who was criminally victimized suffers pain and significant losses (Lurigio et al. 1990). Aware of victims' needs, some pioneers, individuals (Fry 1959) and groups (Elias 1986, Maguire; Shapland 1990) succeeded in con-

1 www.victimsupport.org.uk.

2 www.weisser-ring.de

structing victims' plights as a social problem, required to initiate a public remedy (*Manning 1985, Holstein; Miller 1990*). England carries out the Criminal Injuries Compensation Programme (*Miers 1997*). The USA has enacted the Federal Victims of Crime Act in 1984 (*Tobolowski 2001*), and so do most Western countries (*Sebba 1996*).

The 1983 European Convention on the Compensation of Victims of Violent Crimes (European Treaty Series No. 116, 1983) urged all member countries to compensate any person who sustained serious bodily injury or impairment of health as a result of crime and survivors of those who died (Article 2). This European Convention also specified that "Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalization expenses and funeral expenses, and, as regards dependents, loss of maintenance" (Article 4). These provisions however apply to those who suffered harm in their home country but not necessarily to people traveling abroad for pleasure, business, work, studies, family and other personal reasons and for commercial purposes.

No government takes responsibility for its citizens or residents when they travel abroad. Still, Article 3 of the 1983 European Convention on the Compensation of Victims of Violent Crimes suggests that "Compensation shall be paid by the state on whose territory the crime was committed". This Convention refers therefore to nationals of the European Union only (*Greer 1996, Mikaelsson; Wergens 2001*).<sup>3</sup>

Two months after the September 11, 2001 terrorist attacks in the United States, the Council of Europe began to implement a plan of action by its Committee of Governmental Experts on Terrorism (CODEXTER), responsible for coordinating and following up on the activities of the Council of Europe against terrorism. The Hague Program on Strengthening Freedom, Security and Justice in the European Union, adopted on December 13, 2004 (Document 16054/04), stresses the need to establish an integrated European Union arrangement for crisis management with cross-border effects. The „Guidelines of the Committee of Ministers of the Council of Europe

**3** The United States Office of Victims of Crime (OVC) supports its citizens or residents who became victims of crimes in foreign countries under its International Terrorism Victim Expense Reimbursement Program (ITVERP). <http://www.nacvcb.org>; <http://www.ojp.usdoj.gov/ovc/intdir/welcome.html>

## Fankurve

Wann sind Sie zuletzt so richtig aus sich herausgegangen? Haben sich von der Begeisterung anderer mitreißen lassen? Mich hat es neulich zusammen mit unseren Söhnen in ein ausverkauftes Fußballstadion gezogen. Unsere Plätze waren direkt oberhalb der Fankurve. Gesänge, Getrommel – eine Geräuschkulisse sondergleichen.

Wir ließen uns mitreißen, feuerten das Heimteam mit altbekannten Parolen an und lernten neue dazu. Exzesse und Ausschreitungen – die Kehrseite mancher Fanbegeisterung, gab es zum Glück nicht. Das Besondere an diesem Tag: „Unsere“ Mannschaft ließ sich von der Gänsehautkulisse leider nicht mitreißen. Sie kickte – immerhin – einen routinierten Heimsieg zusammen, gab aber eigentlich keinen Anlass zum Enthusiasmus. Umso ermutigender und wichtiger war sicher der lautstarke Rückhalt des Publikums. Nicht die Zuschauer wurden vom Esprit der Spieler angesteckt, sondern diese erhielten einen Energieschub nach dem anderen von den Rängen. Natürlich sprühten nicht alle Zuschauer gleichermaßen vor Begeisterung. Aber die Fankurve riss die übrigen Ränge immer wieder mit.

Mit Freude und Esprit andere anstecken und beflügeln – das gehört nicht zu den traditionellen Stärken von Deutschland als dem Land der „Dichter und Denker“. Aber vielleicht versuchen wir es einfach mal öfter, nicht nur in der Freizeit, sondern auch bei der Arbeit. Qualität, Fachwissen und Ernsthaftigkeit sind wichtig und unverzichtbar. Aber sie sind eben nicht alles. Gute Stimmung steckt an!

Burkhard Wilke  
wilke@dzi.de

on Human Rights and the Fight Against Terrorism” specifically addresses victim compensation. Paragraph XVII says: “When compensation is not fully available from other sources, in particular through the confiscation of the property of the perpetrators, organizers and sponsors of terrorist acts, the State must contribute to the compensation of the victims of attacks that took place on its territory, as far as their person or their health is concerned.” In addition, the Committee of Ministers in the Council of Europe published “Recommendation (2006) 8 on Assistance to Crime Victims” and the “Guidelines on the Protection of Victims of Terrorist Acts”, adopted on March 2, 2005. Its preamble highlights cross-border victims and specifies “... the need for cooperation between states particularly to assist victims of terrorism and other forms of transnational crimes” (<http://www.coe.int/gmt>).

The neo-liberalist theory may argue that people have the duty to make private provisions to secure their personal welfare. However, since September 2001 almost all insurance companies exclude personal injuries related to terrorist acts, death and damage. Lacking the probability of such events happening and without knowing their future monetary expenses, insurance companies exclude terrorism from their policies (Koch 2004 and 2007).

**The Djerba Case** | On April 11, 2002 a gas-truck exploded near a tourist group visiting the old El Ghriba synagogue in Djerba, Tunisia. 21 people were killed, 14 Germans among them. In addition, 13 tourists, 7 of them minors, suffered severe injuries and burns. The Tunisian authorities provided rescue services and emergency medical treatment. The German Government immediately launched a rescue operation. On June 23, 2002 Al Qaeda claimed responsibility for this attack.<sup>4</sup>

**Rescue, Evacuation and Emergency Care** | The German Foreign Office and the German Embassy in Tunis formed crisis teams to deal with the situation. These teams established immediate contact to the families of the injured and killed victims, as well as to the Tunisian authorities and Touristik Union International (TUI), the tour operator. Since some of the victims suffered severe burns, they were flown to

<sup>4</sup> Mr. Suleiman Abu Ghaith, a spokesman for the Al Qaeda terror network, made this claim on June 23, 2002 in a statement broadcasted on the Qatar-based Al Jazeera television network.

German medical special treatment centers in Berlin, Hamburg and Ludwigshafen. German military hospital planes evacuated the casualties to these centers, followed by their families. The German Government<sup>5</sup> operated effectively. In a television statement on April 22, 2002 Interior Minister *Otto Schily* asserted that the explosion of the truck was „100 percent a criminal, terrorist act“.<sup>6</sup>

**Immediate Relief: The Federal Fund** | On April 23, 2002, the German Federal Cabinet established a ten million euro fund “to help victims of all acts of terrorism committed after January 1, 2001”.<sup>7</sup> In a policy statement made on April 25, 2002, the German Chancellor *Gerhard Schröder* said that this Fund “... will be used to assist people who are in serious difficulty as a result of a terrorist attack abroad”. The Fund was therefore designed to help victims who face exceptional hardship. It was authorized to provide immediate and direct assistance. The Fund was formally approved by the German Federal Parliament on May 15, 2002 and its guidelines were approved a day later. On May 16, 2002 the Federal Government issued a three-page guide to the Fund.<sup>8</sup> It states a general commitment to Germans who have been victimized in terrorist acts while traveling abroad. It allows for provisions to be made to “people who suffered hardship” as a result of a terrorist act and have no other means to cover the costs incurred. Having to apply formally, provisions were to be made on an individual, discretionary basis. The guidelines indicate that help should be provided quickly, with few administrative hurdles.

At the same time, the Tunisian Hotel Association offered one million euro to support the casualties of the Djerba attack. This contribution was added to the German Fund that grew to 11 million euro altogether. Since it was established the Federal fund has made two types of grants. The first is a one time payment made to all families who suffered victimization. Each family that lost a member received a lump sum

<sup>5</sup> Most of the following information is based on press releases made by the German Press and Information Office. <http://www.bundesregierung.de> (Abruf am 17.1.2011)

<sup>6</sup> [http://news.bbc.co.uk/2/hi/middle\\_east/1944161.stm](http://news.bbc.co.uk/2/hi/middle_east/1944161.stm)

<sup>7</sup> The fund retroactively included September 11, 2001 German casualties.

<sup>8</sup> Richtlinie zur Zahlung von Härteleistungen für Opfer terroristischer Straftaten aus dem Bundeshaushalt 2002.

of 15 000 euro. In addition the Fund paid everyone of the Djerba casualties an additional sum depending on the type and severity of the injuries. These payments were not based on needs assessment, and can therefore be viewed as compensation payments made by the German and Tunisian Governments for the Djerba victims.<sup>9</sup>

In addition Djerba casualties could apply to the Fund asking for more help to cover personal needs that were not covered by anyone else. Some families applied for funeral expenses (10 000 to 15 000 euro), others applied for traveling, lodging and *per diem* expenses incurred either in Tunisia, Germany or both. The Fund adopted a flexible regime. During its first year of operation survivors received payments between 10 000 to 190 000 euro depending on the type and severity of their injuries and the actual expenses that they incurred since. These sums were given partly to the families the rest will be saved for young victims until they reach the age of 18.

Obviously no one knows how long the federal fund will last. If it is not re-financed, it will not be sufficient to respond to the victims' needs in the years to come. Families and specifically young casualties may face unexpected medical (physical and mental), educational and rehabilitation costs in the future. This *ex gratia* fund is not implemented according to German law. It is not committed to pay any present or future expenses and its decisions cannot be appealed.

**Securing Ongoing Care for Casualties and Families** | The Djerba explosion resulted in at least three types of losses of earnings or income to its casualties. First, breadwinners were killed leaving their families with no income or with a reduced income only. Second, some of the casualties cannot return to work or can only partly do so as a result of their physical or mental injuries. Third, families who survived the explosion may be homebound to attend to the daily needs of a relative seriously injured or incapacitated at the Djerba explosion. This may be the case with parents of children or adults who as a result of their injury require long term home care. In addition to their reduced income casualties may face individual physical, social and psychological hardships, the costs of which may not be covered by anyone except the victims themselves.

<sup>9</sup> Personal correspondence with the German Federal Ministry of Justice, Berlin.

## Victim Assistance Programs in Germany |

According to the German legal system, a clear distinction is made between German citizens who suffer criminal victimization in the Federal Republic of Germany or outside its borders. Had the explosion happened in Germany, the German Opferentschädigungsgesetz, Criminal Injuries Compensation Act of January 7, 1985 (OEG) would apply. The OEG secures benefits to victims of criminal injuries whose needs are not met by any work-related State (Länder) or Federal program (Mikaelsson; Wergens 2001, Kaiser; Kilchling 1996).

The OEG secures monthly Federal benefits to people who suffer health impairment and financial loss as a result of a criminal act committed against them. In cases of injuries it reimburses the victim. In cases of death it reimburses the survivors. This act covers not only Germans but also (with some exceptions) foreigners who were criminally victimized in Germany. The OEG is a program of last resort, that is, other benefits that the crime victim has will serve as collateral and be deducted from the benefits granted under this law. (Kaiser et al. 1991, Bundesministerium für Arbeit und Sozialordnung 2002). Examples to such collaterals are the German health and social security benefits.

**The German Health and Social Security System** | The German health and social security system is a three tier system. At the bottom of which are the work related schemes, above it are State (Länder) programs and above them are Federal laws. In case of health or disability problems one or more levels of the three tier system will apply (Clasen 1997). It is therefore *important* to note that whatever the need may be at least one of these program levels will apply and relate to the need.<sup>10</sup>

The German social security system will probably be the major yet basic support program for the Djerba casualties. In case of a death of a parent in a family the German social security system will pay a survivor's pension (Hinterbliebenenrente). In addition the German health insurance (Krankenversicherung) is a well established and comprehensive social insurance program in Germany. Due to ongoing financial cuts health insurance may not cover all related

<sup>10</sup> A work injury or a car accident may be referred to a different insurance program, but the overall principle is that health, disability and income maintenance are secured by the German welfare system.

needs. People who are too ill or fragile to care for themselves may be entitled to a Long Term Care Program (Pflegeversicherung) provided by the German social insurance. Both, the health fund insurance and long term insurance may provide the Djerba casualties with the basic means of support, if the need arises. Since some of the casualties were children, it can be expected that the Djerba casualties may require ongoing care in the future.<sup>11</sup> There is no guarantee that the present social security and health fund arrangements will cover all future and long term needs.

### A Public Appeal, a Civil and a Criminal Suit

| On May 23, 2002 six weeks after the tragedy faced with overwhelming trauma and unable to carry the practical burdens some of the Djerba families made a personal appeal to the public through the media asking for assistance. They established a public fund to collect contributions. The Deutscher Opferschutzbund Djerba e.V. operates from Bergkamen in Germany and owns a bank account in a Berlin bank.<sup>12</sup> The public was asked to support the Fund and contribute money. Some of the Djerba victims exposed themselves to the media and spoke about their hardships. They criticized the German Government's inability to cover all their needs, especially those of the children involved. The Djerba ordeal made the news. People were ready to contribute money to help the casualties.

One victimized family who suffered severely litigated against the German travel agency TUI, claiming that this agency did not warn the travelers about the risks of visiting Tunisia. On September 22, 2005 the court (Case 11 U 297/04, 13 O 114/04 Landgericht Hannover) decided that TUI had neither the legal duty to issue such warning nor did it have any reason to do so. As to reimburse the costs the family incurred the court indicated the German Federal Fund did so (p. 3). It is legally and practically impossible for an individual to sue a state because governments enjoy legal immunity. It is therefore impossible for any Djerba victim to sue the Tunisian or German Government for failing to protect them

- 11 Treating deep and wide spread burns may require skin transplants. Effective as they may be, some skin transplants may wear out and need to be replaced by new transplants. This can happen anytime in the future due to medical and aesthetic reasons.
- 12 Based on personal communication with Mr. Michael Esper, the Chairperson of this organization.

against the terrorist attack and for possible negligence after it happened.

A Mr. *Christian Ganczarski* of German citizenship was sentenced on May 18, 2010 in Paris to 18 years imprisonment for his participation in the Djerba disaster. The court also decided that the French victims of the Djerba tragedy will receive 2,3 million euro in compensation from the special French victims of terrorism program (*Lombard* 1996). The question if and who will compensate the German victims is still pending.<sup>13</sup>

**The Aftermath: NOAH** | In 2004 the German Government established the Federal Office of Civil Protection and Disaster Assistance. It initiated an advisory program (NOAH) to care for German victims of disasters or terrorist attacks abroad and their relatives after returning to Germany. Instructions and guidelines were issued.<sup>14</sup> But will it also provide for the different needs of past victims? For their long term care programs?

**Summary and Discussion** | For the public but specifically for the helping professions such as social work the Djerba tragedy is a test case. It examines the rights of people to receive adequate long term care. A right only exists if there is a parallel duty of the state or agency to secure such a right and administer it. Paradoxically, and despite much media coverage, the state has no specific duty to care for people who were victimized even if they are Europeans or Germans. They have little, if any, specific rights to be taken.

Unlike many other groups of victims the victims of terrorism are seen as "innocent" and "deserving" victims (*Christie* 1996): in no way did they contribute to their victimization except for being Europeans, Germans. However, this does not necessarily secure their right to receive comprehensive care that they may, indeed, require at present and in the days to come. Furthermore victims of terrorism enjoy much public sympathy, since terrorism can affect anybody.

- 13 Personal correspondence with Ms. Judith Adam-Caumeil, Avocat à la Cour (27.10.2010). [http://www.rp-online.de/panorama/ausland/Entscheidung-fuer-Djerba-Opfer\\_aid\\_858907.html](http://www.rp-online.de/panorama/ausland/Entscheidung-fuer-Djerba-Opfer_aid_858907.html) (Abruf am 17.1.2011)
- 14 The ministry initiated programs such as NOAH and deNIS, the details of which can be found at <http://www.denis.bund.de/infobaum.html?392> (Abruf am 17.1.2011)

Public contributions made into the Djerba voluntary Fund only indicate this sympathy. The government however does not reflect such an attitude, perhaps because the tragic event happened far from its borders.

If the state does not have the duty to care for its citizens abroad, then another, second motive, a welfare commitment, may apply. One cannot ignore fellow countrymen or women who have been criminally victimized and need treatment, support and help, even if victimization happened abroad. European countries do not acknowledge cross border victims, even if the crime is an act of terror. Recommendations do not specify who should compensate cross border crime victims, let alone victims of terrorism.

To deal with the Djerba casualties and having no public legal commitment to assist them the Federal government established a fund. A fund allows the government to demonstrate its compassion, but at the same time it does not accept any long term commitment, except on a one time non obligatory act. Furthermore, a fund sets no precedent for future cases. In legal terms a fund is an ex gratia token of good will.

By definition a fund has no strict rules. Need oriented, some of the decisions reached by the fund are discretionary and may well vary between applicants. The fund does not necessarily make its decisions known to the public.<sup>15</sup> How solid, durable and comprehensive is the commitment reflected by a fund? Who therefore has the duty to look for the victims and see that their long term needs are taken care for? Djerba casualties, their relatives and families suffered severe physical, emotional and mental traumata. Many will need ongoing, long term physical and perhaps also mental treatments.

As specified before, the German health fund (Krankenkasse) provided comprehensive initial medical treatment to the Djerba casualties, some of them young children. They will require life long care, recurring surgery and rehabilitation treatment. Who will attend to their long term medical needs? And what about treatments that my not have medical but aes-

**15** Until 1992, the British Criminal Injuries Compensation Scheme operated as an ex-gratia program, it used to publish its decisions (anonymously, without giving any details of the applicant). Its decisions were thus open to public review and scrutiny.

thetic merit? Will the Krankenkasse cover future treatments that are not medically justified but that the injured person claims as necessary? In addition the traumatic consequences of the Djerba explosion may also require long term psychological counseling for victims and their families. Again, not all sick funds will adhere to a long term commitment to patients who were not directly insured but gained their insurance rights through their parents medical insurance and may very well claim that they do not wish to cover heavy medical costs in the future. It would therefore be fair to say, that because they were victimized outside Germany the only rights the Djerba casualties have are those provided by the regular German Social Insurance Systems. This system may indeed make only minimal provisions but it has a long-term commitment, established and secured by law.

The West fears that terrorism may rise in the years to come. Despite all efforts to combat terrorism it strikes when and where it is least expected. Unable to prevent acts of terror, governments should consider what would be the best way to help their citizens who were victimized because of being Europeans and compensate them adequate. Social workers will provide the care, but it should be well prescribed by law.

**Professor Uri Yanay, PhD, lehrt an der Paul Baerwald School für Soziale Arbeit und Wohlfahrtspflege der Hebrew University of Jerusalem, Mt Scopus, Jerusalem, 91905 Israel, E-Mail: uri.yanay@huji.ac.il.**

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